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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,447	05/18/2007	Alastair Edwin McAuley	1171/45167/170-PCT-US	6959

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EXAMINER

YOUNG, RACHEL T

ART UNIT	PAPER NUMBER
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3771

NOTIFICATION DATE	DELIVERY MODE
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03/03/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptodocket@trexlaw.com

Office Action Summary	Application No. 10/582,447	Applicant(s) MCAULEY ET AL.	
	Examiner RACHEL T. YOUNG	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 11-14, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 17 and 18 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/8/06, 10/28/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendment

1. This office action is responsive to the amendment filed on 10/22/09. As directed by the amendment: claims 1 and 3-7 have been amended, claims 8-10 and 15-16 have been canceled, and new claims 17-18 have been added. Thus, claims 1-7, 11-14 and 17-18 are presently pending in the application.

Election/Restrictions

2. Newly submitted claims 17-18 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the process as claimed in 17 and 18 can be used to make a materially different product such as a couch cushion.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17-18 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon et al. (2003/0217746) in view of Ging et al. (2003/0196658).

Regarding claim 1, in figure 19 Gradon discloses a cushion 1104 having an inner cushion body 1110; and an outer sealing sheath (1112, Page 3, ¶ 56), that engages around the inner cushion body, and the outer sealing sheath deforms substantially independently of the inner cushion body (there is a gap between the sheath and the inner cushion that allows the sheath to deform and it is also of flexible material because it is stretched over the inner cushion (Page 3, ¶ 58). Gradon is silent regarding an outer cover that is formed of the same elemental material and is adhered to the inner cushion body, however Ging teaches a facemask with an outer cover (205, Fig. 24d, "membrane" Page 13, ¶ 174-175) that is made of polyurethane (Page 13, ¶ 174, ll. 14). Gradon discloses that the inner cushion body is also made of polyurethane (Page 3, ¶ 56, ll. 3-4). Therefore, it would have been obvious to one of ordinary skill in the art at

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the time the invention was made to modify Gradon's inner cushion body to include an outer cover that is made of polyurethane, as taught by Ging, for the purpose of providing a tightness or stretching of the inner cushion (Page 13, ¶ 174).

Regarding claims 2-5, the modified Gradon discloses that the elemental material of the inner cushion is polyurethane (Gradon Page 3, ¶ 56, ll. 3-4), and that a cushion body is formed in polyurethane foam (Page 3, ¶ 56, ll. 3-4). Ging also teaches that the outer cover adhered (Page 13, ¶ 174) to a cushion is made of polyurethane film (Page 13, ¶ 174 polyurethane membrane).

Regarding claim 7, Gradon discloses that the inner cushion body includes an attachment (108, 122, 120, Fig. 2) to engage a mask.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon/Ging in view of Colvin et al. (5,518,802).

Regarding claim 6, Gradon discloses the inner cushion body, but does not explicitly recite that the cushion body is assembled from more than one moulded component. However, it appears that Gradon's inner cushion in figure 19 is assembled from more than one moulded component as evident by the three lines along the bottom of the inner cushion and line on the top right edge of the inner cushion. The technique of moulding components together is also well known in the art. Additionally, Colvin teaches a cushion body (that can be used in garments to increase comfort, abstract) that is assembled from more than one moulded component (Col. 7, ll. 27-29).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the

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invention was made to modify Gradon's inner cushion body with a cushion body made from more than one moulded component, as taught by Colvin, for the purpose of providing greater strength in the cushion structure (Col. 7, ll. 29).

7. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon et al. in view of Colvin et al.

Regarding claims 11-13, Gradon discloses a mask (2, Fig. 1) to deliver gas to a patient (Page 1, ¶ 2, ll. 5-6) comprising a cushion body (1104, Fig. 18). Gradon is silent regarding that at least a portion of the cushion body has a plurality of adjacent voids, and that each of the voids has a hexagonal cross section, and that each of the voids has a square cross section. However, Colvin teaches a cushion (that can be used in garments to increase comfort, abstract) with a plurality of adjacent voids (27, Fig. 1), and each of the voids has a hexagonal cross section (Fig. 1), and each of the voids has a square cross section (Fig. 3A). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Gradon's cushion body with a cushion body having a plurality of adjacent voids, and each of the voids has a hexagonal cross section, and and each of the voids has a square cross section, as taught by Colvin, for the purpose of providing good shock absorbing protection (Col. 7, ll. 30-33).

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradon/Colvin in view of Ging et al.

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Regarding claim 14, Gradon discloses a cushion body (1104, Fig. 18) having an outer sealing sheath (1112, Fig. 19, Page 3, ¶ 56, ll. 2-3). Gradon is silent regarding an outer cover, however Ging teaches a facemask with an outer cover (200, Fig. 24a, "support structure" Page 12, ¶ 171, ll. 5-8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the modified Gradon's cushion to include an outer cover, as taught by Ging, for the purpose of providing additional structural support.

Response to Arguments

9. Applicant's arguments filed 10/22/09 have been fully considered but they are not persuasive. Regarding claims 1-5 and 7-10 on page 6 applicant argues that "the 'membrane' of Ging does not cover an inner cushion, nor is adhered to an inner cushion". However, Ging does teaches a sealing polyurethane membrane 205 in figs 24a-24b (Page 13, ¶ 174-176) that covers ("stretch readily over the lower portion of the nasal bridge" Page 13, ¶ 175) and adheres ("the membrane 205 extends inwardly/downwardly further than the edge of the cushion" Page 13, ¶ 176) to an inner cushion 40.

10. Regarding claims 6 and 11-14, applicant argues that "there is no reason for one skilled in the art to combine the cushion in Colvin with the cushion in Gradon", however Colvin teaches a cushion that can be used in garments to increase comfort (abstract) and is therefore relevant art.

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11. Claims 17-18 have been restricted because they are drawn to an invention distinct from the invention originally claimed.

12. Regarding the IDS filed for Serial No. 10/575,324, this IDS was inadvertently returned in this application, and an annotated copy of the IDS dated 6/8/06 is attached.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gradon et al. (2002/014241) to a patient interface with an inner cushion, Walters et al. (6,116,235) to a foam structure with a plurality of voids, and Davis et al. (2003/0149384) to an anatomical support with a foam including a plurality of voids. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL T. YOUNG whose telephone number is (571)270-1481. The examiner can normally be reached on mon-thurs 7 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RACHEL T YOUNG/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771